

COMMITTEE FOR IDAHO'S HIGH DESERT

IBLA 94-734

Decided July 7, 1997

Appeal from a Decision Record and Finding of No Significant Impact of the Challis Resource Area Office, Bureau of Land Management, approving the Coyote Spring and Pipeline Reconstruction Project located partially within the Borah Peak Wilderness Study Area. ID-040-1-33.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness–Grazing and Grazing Lands–Wilderness Act

The approval of a water development range improvement project, which lies partially within a wilderness study area and involves reconstruction of a spring facility and burying new pipelines alongside existing lines, will be affirmed where the record establishes that the project is consistent with BLM's Interim Management Policy and Guidelines for Lands Under Wilderness Review, and that the project will not impair the area's suitability for inclusion in the permanent wilderness system.

2. Environmental Quality: Environmental Statements

A party challenging a decision record and finding of no significant impact, based on an underlying environmental assessment, must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal.

APPEARANCES: Brian Shaeffer, Boise, Idaho, for Appellant; Kenneth M. Sebby, Esq., Office of the Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

The Committee for Idaho's High Desert (Committee) has appealed a Decision Record/Finding of No Significant Impact (DR/FONSI), issued on July 7, 1994, by the Challis Resource Area Manager, Bureau of Land

Management (BLM), Idaho, approving the Coyote Spring and Pipeline Reconstruction Project, which lies partially within the Borah Peak Wilderness Study Area (WSA).

According to the Environmental Assessment (EA) No. ID-040-1-33, Coyote Spring was initially developed in 1941 with a spring box and watering trough for livestock. Two pipelines with four watering troughs were installed in 1968. The development is the only source of livestock water for the Coyote Spring (south) pasture of the Whiskey Springs Allotment and the northern part of the adjoining Mackay Allotment. At the time of preparation of the EA, the Coyote Spring watering facilities were nonfunctioning. Reconstruction of the spring would facilitate grazing within both allotments and serve the water needs of wildlife as well. (EA at 1-2.) ^{1/}

Coyote Spring is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, sec. 1, T. 8 N., R. 22 E., Boise Meridian, Custer County, Idaho, in the Whiskey Springs Allotment, which lies within the Borah Peak WSA. The south boundary of the WSA runs through the SE $\frac{1}{4}$ of sec. 1. The pipeline branch for the Whiskey Springs Allotment runs southwest from the spring 2,500 feet along an existing road, entirely within the WSA. The pipeline for the Mackay Allotment runs due south 4,580 feet into sec. 12, T. 8 N., R. 22 E. From there, a 3,074-foot proposed extension of the pipeline would run into the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 7, T. 8 N., R. 23 E. Approximately 1,200 feet of the Mackay Allotment pipeline running south from Coyote Spring would be within the WSA.

In general, the proposed action approved by the Challis Resource Area Manager involves five activities: 1) digging up and resetting the existing spring box; 2) building a four-strand wire fence around the box to enhance recovery of riparian vegetation; 3) burying a new pipeline alongside the existing pipeline (except for a short portion which would be rerouted to facilitate water flow); 4) extending the Mackay Allotment portion of the pipeline approximately 3,074 feet; and 5) moving the upper trough on the Mackay Allotment portion of the pipeline and installing it at the southern end of the proposed extension. (EA at 2.)

More particularly, the proposed action includes disturbing an area approximately 10 by 10 feet to construct the hole for the spring box. The spring box itself is a piece of steel culvert 24 to 36 inches long and 20 to 30 inches in diameter perforated with small holes with a steel lid. Two lateral ditches approximately 2 feet wide, 3-1/2 to 4 feet deep and 40 feet long would extend from the spring box. A 4- to 6-inch diameter perforated pipe would be laid in each ditch with gravel around it. Filter

^{1/} The DR/FONSI is part of the title page of the EA. The EA is not paginated. Our references to the EA do not count the title page.

cloth would be placed over the pipe and the ditch would be backfilled with soil. Digging and backfilling would be performed by a low-impact, wide-track designed backhoe. ^{2/}

An area approximately 100 by 100 feet around the springhead would be fenced with a wire fence to prevent trampling by livestock and wildlife.

Ditching, pipeline laying, and backfilling would occur simultaneously in one operation conducted by a crawler type tractor with a pipelayer mounted on it. The pipeline ditch for the Whiskey Springs Allotment within the WSA would be laid down the centerline of an existing road to an existing water trough. The pipeline ditch for the Mackay Allotment would be laid alongside the existing line except that a short segment will be rerouted to improve the flow of water through the line. All rerouting would occur outside the WSA boundary. The existing trough on the Mackay pipeline would be relocated to the end of the new extension. Construction vehicle traffic would be confined to existing roads. (EA at 2-3.)

[1] The standard for managing a WSA during wilderness review is found in section 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1994). Therein, the Secretary is expressly directed to "manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c) (1994); Howard G. Booth, 134 IBLA 300, 303 (1996), and cases cited therein. However, that same section provides an exception to the nonimpairment standard for mining and grazing uses already existing on October 21, 1976, allowing such uses to continue in the same manner and degree as they were conducted on October 21, 1976, even if such grandfathered uses would impair the wilderness suitability of the land. Such activities are to be regulated only to prevent undue and unnecessary degradation of public lands. 43 U.S.C. § 1782(c) (1994).

In furtherance of the statutory directive, the Department adopted the Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP), which governs BLM's management of WSA's pending ultimate congressional determination regarding whether the study areas should be included in the permanent wilderness system. See Nevada Outdoor Recreation Association, 136 IBLA 340, 342 (1996); Oregon Natural Resources Council, 114 IBLA 163, 167 (1990); The Wilderness Society, 106 IBLA 46, 55 (1988). ^{3/}

^{2/} The EA proposes the installation of an additional spring box (one for each pipeline) if water volume in the reset spring box is insufficient to supply both existing branches of the pipeline.

^{3/} The IMP was originally published at 44 Fed. Reg. 72014 (Dec. 12, 1979), and thereafter amended at 48 Fed. Reg. 31854 (July 12, 1983). It is now contained in BLM's Manual as a handbook, H! 8550! 1 (Rel. 8! 36 (Nov. 10, 1987)). Page references in the text are to the Handbook edition.

The Committee asserts that the proposed action will "permanently and irreparably harm the Borah Peak WSA and its suitability for preservation as wilderness since it involves the permanent placement of additional man-made structures and creates significant new surface disturbances to soils and vegetation which will be visible for years to come." (Statement of Reasons (SOR) at 1.) It contends that BLM's DR/FONSI is fraught with errors of law and fact. Counsel for BLM has filed an Answer contending that the Coyote Spring project meets nonimpairment criteria and presents no impacts which would preclude the eventual inclusion of the area in the wilderness system. In this opinion, we will restate arguments of the parties only to the extent necessary to facilitate our review and disposition of the appeal. To the extent not specifically discussed herein, the Committee's arguments have been considered and rejected.

The Committee argues that the DR/FONSI and the EA violate the IMP nonimpairment criteria set forth in the IMP because the impacts of the proposed action are not temporary; it will create new disturbances; it involves permanent placement of structures; and it fails to meet BLM's reclamation deadline of September 30, 1990, for the restoration of plant cover impacted within WSA's. See IMP at 13. However, before turning to those criteria, we believe examination of other sections of the IMP is instructive.

At Chapter III, H. RANGELAND MANAGEMENT, 1. General, the IMP provides as follows:

In some respects, rangeland management activities are less restricted by the IMP than other activities. This is partly because livestock grazing, at appropriate stocking levels, in itself, can be compatible with maintaining wilderness suitability; it is partly because most grazing operations on the public lands qualify as "grandfathered" uses; and it is partly because some range improvements can enhance wilderness values by better protecting the rangeland in a natural condition.

(IMP at 44.)

More specifically, the IMP addresses range improvements at Chapter III, H. 3., providing for pre-FLPMA improvements that they "may continue to be used and maintained." (IMP at 45.) The Committee contends that the project in question does not involve maintenance of an existing system, but the construction of a new project. While the spring development and pipelines have existed for many years, reasonable minds could differ over whether the actions proposed to be taken involve mere maintenance. In fact, in its Answer at page 5, BLM describes the work to be done not as maintenance, but as "reconstruction." ^{4/} However, we need not decide whether the proposed action involves maintenance of an existing water

^{4/} In its Answer at 5, BLM quotes its "definition" of "reconstruction," but does not provide a citation to the source of that definition.

development or the construction of a new water development because, even assuming new construction, we find no violation of the IMP.

Under IMP guidelines at Chapter III, H. 4. d., a new, permanent water development may be developed in a WSA if the water trough blends with the surrounding landscape, the pipeline area is put back to original contour, and plant cover is restored as specified in the nonimpairment criteria. (IMP at 47.) Also, such a development must not require motorized access if the area were designated as wilderness; the improvements must be substantially unnoticeable in the WSA as a whole; and after completion of any needed reclamation, the area's wilderness values must not be degraded so far as to constrain the Secretary's wilderness suitability recommendation. Id. at 46.

The EA implies that the existing water trough at the end of the pipeline in the Whiskey Springs Allotment will be utilized in the project. There is no issue regarding the restoration of the pipeline areas to original contour. The Committee, however, contends that since the reclamation deadline has passed, any activity proposed in the WSA must immediately meet the nonimpairment standard, and it asserts, the proposed action cannot.

Although the IMP section governing range improvement water developments provides that restoration of plant cover must meet the nonimpairment criteria, examination of the nonimpairment standard shows that certain activities are considered nonimpairing, while all others must meet the nonimpairment criteria. The activity under consideration in this case is the reconstruction of Coyote Spring and the pipelines. We find that under the nonimpairment standard that activity is nonimpairing.

The EA describes the following positive benefits from the proposed action:

Plant species in the spring area should benefit from the fence due to the fact that they will be protected from grazing by livestock and big game. * * * Grazing exclusion of the spring area should enhance the wilderness values, by allowing full vegetative expression of herbaceous and woody riparian plant species.

The proposed action would not result in any significant adverse effect on any wildlife species. The construction of the fence would help to protect and improve the condition of the riparian area around Coyote Springs, thereby improving habitat condition for some riparian dependent wildlife species.

(EA at 5.)

In discussing the impacts of the no-action alternative, BLM stated that those impacts would be most significant on the range condition of the other pastures in the Whiskey Springs Allotment. The rest-rotation grazing system would be inoperable without the use of the south pasture, which is approximately one-third of the allotment. Grazing pressure in the two other pastures of Whiskey Springs could cause adverse affects on the wilderness values over a much broader area.

(EA at 6.) The BLM also noted that, in time, no action "would have a negative affect on the range condition in other areas of both allotments." Id.

Under the nonimpairment standard, "[a]ctivities that protect or enhance the land's wilderness values * * * are considered nonimpairing." (IMP at 13). We find that the proposed water development project will, rather than "permanently and irreparably harm the Borah Peak WSA," as alleged by the Committee, protect the land's wilderness values. Under those circumstances, the nonimpairment criteria are inapplicable to the proposed water development project.

In addition, there is no evidence that the project would require motorized access if the area were designated as wilderness. The improvements are substantially unnoticeable in the WSA as a whole. See EA at 5. Finally, there will be no degradation of wilderness values.

The Committee also asserts that the EA is vague about the extent of the area which will be impacted and contains an insufficient analysis of soils, reclamation potential and topography. First, the EA is specific about the area to be impacted; measurements for the spring area and surrounding fenced area are set forth. In addition, all dimensions of the pipeline ditches are listed, as are the types of vegetation and soil type. The Committee's assertion that these items warrant more discussion or analysis is unsupported by any evidence that impacts not addressed in the EA would reasonably be anticipated from construction of the project. While the Committee complains that there is no discussion of the impact the tractor/pipelayer will have on the soil and vegetation along the "entire length of the proposed pipelines (at least 3,700 feet) within the Borah Peak WSA," (SOR at 8), it is undisputed that, as set forth in the EA at 3, the 2,450 feet of pipeline in the Whiskey Springs Allotment will be laid down in an existing road. The remaining 1,200 feet of pipeline in the WSA is to be laid alongside the existing pipeline leading to the Mackay Allotment. As BLM explains in its Answer at 2, "the planned method of laying the pipeline loosens the plant roots but destroys very little vegetation." Also, "[i]t has been BLM's experience that the impacts of the heavy equipment tracks are very minimal and they disappear within a month or two." Id.

[2] A party challenging a DR/FONSI, based on an underlying EA, must show that the determination was premised on a clear error of law, a

demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal. Oregon Natural Resources Council, 139 IBLA 16, 22 (1997); Sierra Club, Toiyabe Chapter, 131 IBLA 342 (1994).

The Committee argues that the EA fails to assess impacts of the proposed action and fails to consider alternatives and mitigation. The Committee criticizes the EA for being inaccurate, subjective, and overly generalized.

Impacts were, in fact, analyzed and are discussed at pages 5 through 7 of the EA. Most of the impacts are anticipated as being beneficial to vegetation and wildlife values. The EA states, too, that the project "is well within the VRM (visual resource management) objectives for the WSA as a whole," and that "both the visual and physical impacts should be minimal." (EA at 5.) The EA notes that while the fence constitutes a minimal intrusion, it can easily be removed with no need for rehabilitation if the area is designated a wilderness area.

In addition to a no-action alternative, the EA also considered two other alternatives. The impacts associated with these alternatives are set out in the EA. The Committee is incorrect in its allegation that mitigation is not considered in the EA. The methods of construction, including the use of a low-impact, wide-track designed backhoe, the location of pipelines, and the selection of the type of fence to be used are all mitigating measures.

The EA reflects a reasonable assessment of anticipated impacts and reasonably supports the conclusion that those impacts will be insignificant and nonimpairing. The Committee's objections and criticisms are in the nature of disagreements with BLM's determination and do not demonstrate errors of law or fact.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur.

Will A. Irwin
Administrative Judge

